

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE STEPHEN V. WILSON, JUDGE PRESIDING

— — —

## **VERNON UNSWORTH,**

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## Reporter's Transcript of Proceedings

**JURY TRIAL - DAY FOUR**

## **MORNING SESSION**

Los Angeles, California

**FRIDAY, DECEMBER 6, 2019**

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1 FRIDAY, DECEMBER 6, 2019

8:50 A.M.

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3 JURY TRIAL - DAY FOUR

4 MORNING SESSION ONLY

08:55:09 5 ~ ~ ~

09:01:53 6 **THE COURT:** We're here with the parties and  
09:01:55 7 counsel, and we are at the point where we're going to  
09:02:03 8 instruct the jury and then begin deliberations. But there  
09:02:11 9 are some matters that were brought up toward the end of the  
09:02:15 10 trial that weren't fully addressed even though we went late  
09:02:23 11 into the evening yesterday, and those involve the motions to  
09:02:29 12 strike by the defendant.

09:02:36 13 One motion was the defendant -- the witness  
09:02:44 14 Birchall's use of pseudonym, Jack Brickhouse. I think under  
09:02:51 15 the circumstances that's inconsequential, and that motion  
09:02:55 16 will be denied.

09:02:56 17 The testimony regarding press leaks will be  
09:03:12 18 denied because I agree with the plaintiff, that it does allow  
09:03:17 19 the jury, if they so conclude, to conclude that this was  
09:03:32 20 something of a pattern or practice which relates back to the  
09:03:37 21 July 15 tweet. It's not my job to limit evidence based upon  
09:03:53 22 weight. If it has sufficient probative value, it can be  
09:04:02 23 received.

09:04:03 24 My primary question is with regard to the  
09:04:13 25 hiring of the -- testimony regarding the hiring of a private

09:04:21 1 investigator and the \$10,000 payment, and they're separate  
09:04:27 2 issues.

09:04:29 3 Pretrial I did ask the defendant whether the  
09:04:41 4 defendant was going to stipulate to Element 5 of the  
09:04:47 5 defamation claim, and their response was they were not. And  
09:04:58 6 so the hiring of an investigator was, even though it was down  
09:05:07 7 the road, was relevant to show duty of care on Element 5.

09:05:23 8 On the other hand, the case law says that the  
09:05:28 9 post-statement evidence is admissible if there are post -- in  
09:05:45 10 this case -- July 15, statements that are defamatory, and the  
09:05:54 11 hiring of the investigator after the August 6 demand letter  
09:06:08 12 and \$10,000 payment arguably strays somewhat from that  
09:06:20 13 doctrine.

09:06:33 14 So, let me ask the defendant, whoever speaks  
09:06:37 15 for the defendant, take the lectern. There are so many  
09:06:39 16 lawyers here.

09:06:39 17 **MR. SPIRO:** Good morning, Your Honor.

09:06:41 18 **THE COURT:** Yes, good morning.

09:06:43 19 If the plaintiff clearly has the right to  
09:06:53 20 argue the point that defendant could have investigated before  
09:07:03 21 making a statement, and forgetting for the moment the hiring  
09:07:13 22 of the private investigator, Howard, in the middle of August,  
09:07:22 23 if the plaintiff argued that defendant could have hired an  
09:07:27 24 investigator before responding to the Unsworth interview of  
09:07:39 25 July 13, would you rebut that?

09:07:43 1                   **MR. SPIRO:** No, Your Honor, so long as it's kept  
09:07:46 2 separate and apart from the other incidents you described.

09:07:49 3                   **THE COURT:** I don't understand the last part of  
09:07:51 4 your --

09:07:51 5                   **MR. SPIRO:** If it was just simply that, then, no,  
09:07:54 6 I would not rebut it.

09:07:55 7                   **THE COURT:** In other words -- and so, the --

09:08:02 8                   Because that was one of the primary reasons  
09:08:04 9 why the testimony of the investigator was received --

09:08:22 10 (paused.)

09:08:22 11                   **MR. SPIRO:** Your Honor, it's our position --

09:08:25 12                   **THE COURT:** Wait a minute. Don't interrupt. When  
09:08:27 13 there is a pause, it doesn't give you license to fill up the  
09:08:30 14 air space.

09:08:31 15                   **MR. SPIRO:** My apologies.

09:08:58 16                   **THE COURT:** Now, on the same issue, there is also  
09:09:01 17 my processing of the evidence, and of course I don't know how  
09:09:04 18 the lawyers process the evidence, that the Howard  
09:09:16 19 investigation was somewhat favorable to the defense in the  
09:09:26 20 sense that it shed light on the BuzzFeed e-mail of -- e-mail  
09:09:49 21 of August 30.

09:09:50 22                   In other words, when Musk made the statements  
09:09:53 23 that he did make in that e-mail, I thought one of your -- the  
09:09:59 24 fact that he had asked these questions of the investigator  
09:10:05 25 and that at least at the point of the BuzzFeed, so the

09:10:11 1 defense position would be they believed Howard was a  
09:10:15 2 straight-up investigator and that he was telling them the  
09:10:23 3 kinds of things that Musk thought were certainly relevant to  
09:10:30 4 further investigation by the BuzzFeed reporter. That was how  
09:10:35 5 I was processing some of the information. But if I grant  
09:10:41 6 your motion to strike the hiring of the private investigator,  
09:10:52 7 then that argument is removed.

09:10:58 8 How do you view it in that context? Do you  
09:11:05 9 still want it removed?

09:11:06 10 **MR. SPIRO:** Well, it depends on whether or not the  
09:11:08 11 Court is considering removing -- I guess --

09:11:11 12 **THE COURT:** I'm not removing the BuzzFeed.

09:11:13 13 **MR. SPIRO:** Then I can't be excised from  
09:11:15 14 commenting at all on the fact that he had information at that  
09:11:15 15 point, because you're right, it would clear the gap for the  
09:11:17 16 defense.

09:11:17 17 **THE COURT:** That's the point, that's the point.  
09:11:21 18 All right, we've got that resolved.

09:11:24 19 Then on the issue -- the final issue, the  
09:11:30 20 \$10,000 payment. Before I get further into that, I want to  
09:11:40 21 have my memory refreshed as to what the record shows.

09:11:47 22 I don't have a clear memory of whether during  
09:11:58 23 Birchall's testimony he was asked whether he told Musk about  
09:12:04 24 the \$10,000 payment or whether Musk told him to make the  
09:12:12 25 payment, and I seem to remember that in the defense

09:12:18 1 examination of Musk that the defense asked Musk whether he  
09:12:24 2 knew about the \$10,000 payment, and he denied it. And I  
09:12:32 3 don't recall whether Birchall was asked further about --  
09:12:39 4 about whether he communicated the payment to Musk.

09:12:47 5 Do the parties have a memory of what that  
09:12:51 6 was?

09:12:51 7 **MR. WOOD:** I do, Your Honor.

09:12:53 8 **THE COURT:** You do?

09:12:53 9 **MR. WOOD:** Not a memory, but I have Mr. Musk's  
09:12:56 10 transcript.

09:12:57 11 **THE COURT:** All right, well, just tell me.  
09:12:58 12 Quickly.

09:13:00 13 **MR. WOOD:** He acknowledged that he was aware of  
09:13:00 14 it. He thought it was reasonable to pay the bonus for  
09:13:05 15 receiving verified information, and he knew had not been  
09:13:08 16 paid.

09:13:10 17 **THE COURT:** I see.

09:13:10 18 **MR. SPIRO:** Your Honor --

09:13:11 19 **MR. WOOD:** It's pages 91 and 92 of the transcript.

09:13:16 20 **MR. SPIRO:** -- I don't believe that's the  
09:13:18 21 transcript.

09:13:19 22 **THE COURT:** Well, I mean, there isn't a formal  
09:13:21 23 transcript, but you are getting dailies, aren't you?

09:13:24 24 **MR. SPIRO:** Right, and we're looking at the  
09:13:26 25 transcript. We don't see Mr. Musk saying that he was aware

09:13:29 1 of it. I think what Mr. Musk testified to is, under the  
09:13:33 2 circumstances, he doesn't find it unreasonable if that  
09:13:36 3 happened, but not that he was actually aware of it.

09:13:39 4 **THE COURT:** Do we have --

09:13:40 5 Can we pull up the daily? Do you -- let's  
09:13:45 6 find out.

09:13:48 7 Just one moment. Are we doing that now? Is  
09:13:59 8 that it?

09:14:00 9 **MR. SPIRO:** Yes.

09:14:01 10 **THE COURT:** Is that going to be lengthy?

09:14:02 11 **MR. SPIRO:** I think it's a very short --

09:14:05 12 **THE COURT:** Yeah, okay.

09:14:36 13 **MR. WOOD:** Your Honor, would you --

09:14:38 14 **THE COURT:** Nothing further at this point.

09:15:10 15 **MR. SPIRO:** Your Honor, would you like to see the  
09:15:12 16 testimony or have it read?

09:15:17 17 **THE COURT:** Hand it up.

09:15:21 18 **MR. WOOD:** May I ask what page number, Your Honor?

09:15:28 19 (Discussion off the record.)

09:15:38 20 **THE COURT:** I'm looking at the daily at page 90  
09:15:43 21 at --

09:16:09 22 (Discussion off the record.)

09:16:11 23 **THE COURT:** But what you just gave me relates to  
09:16:13 24 what Howard was paid, \$52,000.

09:16:20 25 I'm interested in the \$10,000 bonus.

09:16:23 1                   **MR. SPIRO:** It follows in the next --

09:16:25 2                   **THE COURT:** Oh, it does? Okay. Just give me a

09:16:29 3 moment.

09:17:50 4                   So, the relevant part seems to be at page 91,

09:17:54 5 lines 14 through 24.

09:18:03 6                   "Question: Were you aware -- well, were you aware

09:18:09 7 that in August of 2018 that on your behalf Mr. Birchall,

09:18:14 8 under the name of Jack Brickhouse, told Mr. Howard, the con

09:18:20 9 man, before he knew that, that he told him in August 2018

09:18:24 10 that he would pay him a \$10,000 bonus for verified

09:18:29 11 information of nefarious conduct by Vernon Unsworth. Did you

09:18:35 12 know he was incentivizing him with that bonus, sir?

09:18:40 13                   "Answer: I never caught the specifics of the

09:18:43 14 conversation, but that doesn't sound unreasonable if it's

09:18:45 15 verified information.

09:18:48 16                   "Question: But if you don't produce the

09:18:50 17 information under that scenario, you don't get the bonus,

09:18:54 18 right?

09:18:55 19                   "Answer: Correct. Verified information.

09:19:03 20                   "Question: And you know that he never got the

09:19:06 21 bonus because he never produced any confirmed verified

09:19:09 22 information of nefarious conduct by Vernon Unsworth. True?

09:19:20 23                   "Answer: Yes, true."

09:19:21 24                   So, that is the relevant part. Okay.

09:19:26 25                   **MR. SPIRO:** Yes, Your Honor.

09:19:27 1                   **MR. WOOD:** Yes, Your Honor.

09:19:30 2                   **THE COURT:** And the argument could be that that is  
09:19:39 3 beyond the scope of the case law which allows circumstantial  
09:19:54 4 evidence of post July 15 tweet, that certainly is a detail;  
09:20:06 5 and furthermore, it has the potential for confusing the jury  
09:20:13 6 in the sense that there is a duty of care requirement under  
09:20:26 7 Element 5 of the defamation.

09:20:37 8                   And this evidence has a duty of care aspect  
09:20:51 9 with regard to defendant's -- assuming there is an adequate  
09:21:01 10 connection between Musk and the \$10,000 payment and the duty  
09:21:08 11 of care in dealing with the investigator.

09:21:30 12                   I'll briefly hear from each side, once again,  
09:21:35 13 on that motion to strike. It would be the motion to strike  
09:21:39 14 the \$10,000 payment, I would suppose, on two grounds: One,  
09:21:50 15 there is an inadequate connection to Musk's knowledge of the  
09:21:56 16 payment; and second, that even if the inference suggests that  
09:22:04 17 Musk knew about it, it is too tangential by way of post July  
09:22:17 18 15 evidence.

09:22:23 19                   Briefly, without giving me your final  
09:22:25 20 argument, how do you see that?

09:22:29 21                   First you.

09:22:30 22                   **MR. WOOD:** Thank you.

09:22:37 23                   Two points: One, I believe that the  
09:22:39 24 testimony that Your Honor just read, that was presented to  
09:22:42 25 the jury, does allow the jury to make a reasonable inference

09:22:47 1 from that testimony that Mr. Musk knew -- while not the  
09:22:52 2 specifics -- he did not deny; he said I just didn't know the  
09:22:56 3 specifics. I think the connection is there.

09:22:58 4 The issue of how to use that -- I don't even  
09:23:01 5 intend to mention in my opening statement -- my closing  
09:23:03 6 statement -- but it's probative of Mr. Musk's state of mind.

09:23:11 7 **THE COURT:** In what regard? In other words, he  
09:23:13 8 said that you'll get a \$10,000 payment if you provide  
09:23:20 9 verified information. And at that point he's being sued. I  
09:23:33 10 mean, the suit hadn't been filed, but he got your letter.  
09:23:37 11 So, how does it reflect upon his state of mind on July 15th?

09:23:43 12 **MR. WOOD:** It demonstrates, as one piece of  
09:23:46 13 evidence that as of August 15th, he still didn't know if it  
09:23:51 14 was true or false because he hired an investigator. That  
09:23:55 15 means he didn't know it on July the 15th.

09:23:58 16 The second part is not actual malice --  
09:24:01 17 that's actual malice -- common law malice. It demonstrates  
09:24:05 18 that type of malice, oppression or fraud in his state of mind  
09:24:08 19 across the time period. If you do that on August 15, you  
09:24:11 20 have the state of mind to do that type of thing on July the  
09:24:13 21 5th.

09:24:13 22 **THE COURT:** But he's already said that he didn't  
09:24:16 23 know whether -- at the time of the July 15 tweet, he didn't  
09:24:23 24 know whether Unsworth was a pedophile or not. He knew  
09:24:31 25 nothing about Unsworth. Even in the tweet it starts out by

09:24:36 1 saying something like: Never met this guy before, and so  
09:24:42 2 forth. So, he can't possibly argue to the jury that he had  
09:24:47 3 some belief at the time that Unsworth was a pedophile because  
09:24:53 4 that's not his -- that's not going to be his argument.

09:24:58 5 So, on Element 5, and that's why I asked the  
09:25:06 6 defendant pretrial whether that was going to be conceded, and  
09:25:12 7 in light of the fact that he didn't concede it, that's why we  
09:25:18 8 move forward.

09:25:19 9 But now if the defense is not going to argue  
09:25:27 10 that Musk could have conducted an investigation on July 15  
09:25:35 11 before making the statement, what is the probative value as  
09:25:44 12 to his state of mind on July 15 when in August 15 he, through  
09:25:52 13 Birchall, hired the investigator.

09:25:55 14 **MR. WOOD:** Because on July the 15th, when he  
09:25:57 15 tweeted, he did know Mr. Unsworth. He had conducted an  
09:26:01 16 investigation. He had seen Mr. Unsworth on the CNN  
09:26:06 17 interview, and then he's testified that up to an hour or so,  
09:26:09 18 he went in and started researching Mr. Unsworth in Chiang  
09:26:13 19 Rai, and he took that body of knowledge that he knew about  
09:26:17 20 Vernon Unsworth, and he tweeted, what we contend, was that  
09:26:20 21 that man, on the interview, from what I've read about him  
09:26:25 22 factually, and he put the factual information in his tweet,  
09:26:28 23 he told the world he was a pedophile. That why it goes to  
09:26:33 24 his state of mind.

09:26:34 25 Thank you.

09:26:34 1                   **THE COURT:** Let me hear the response.

09:26:35 2                   **MR. SPIRO:** We're not arguing, Your Honor --

09:26:39 3                   **THE COURT:** Take the lectern so I can hear you

09:26:41 4 better.

09:26:41 5                   **MR. SPIRO:** Your Honor, we're not arguing that

09:26:43 6 there was any factual basis whatsoever on July 15th to make

09:26:46 7 any accusation. So, the -- it's just not an issue from our

09:26:53 8 perspective, and so it doesn't go -- it's not probative as to

09:26:56 9 what was in his mind on July 15 because our position is, he

09:27:00 10 wasn't intending -- he had no facts, and he wasn't intending

09:27:02 11 to make any accusations.

09:27:09 12                   **THE COURT:** And on the \$10,000 payment, your final

09:27:13 13 thought?

09:27:14 14                   **MR. SPIRO:** Again, I don't think there is --

09:27:15 15                   We don't believe there is sufficient

09:27:17 16 connection to Mr. Musk based on that testimony. What he's

09:27:21 17 responding to is, they never verified the information, which

09:27:25 18 Mr. Musk said several times --

09:27:28 19                   **THE COURT:** Let's say there was a sufficient

09:27:29 20 connection, what would your argument be?

09:27:34 21                   **MR. SPIRO:** That the manner of compensation in an

09:27:38 22 investigation doesn't have any bearing -- on a later

09:27:41 23 investigation, doesn't have any bearing on --

09:27:45 24                   **THE COURT:** Something of a detail.

09:27:46 25                   **MR. SPIRO:** Correct, Your Honor, it lacks

09:27:48 1 probative value, and we would move under 403 --

09:27:51 2                   **THE COURT:** I'll give this a few minutes' thought,  
09:27:54 3 and then I'll come out and give you my final ruling.

09:27:57 4                   **MR. SPIRO:** Thank you.

09:28:02 5                   (Recess taken.)

09:38:21 6                   **THE COURT:** Okay, here are my rulings on the  
09:38:27 7 matters we discussed.

09:38:29 8                   I am going to grant the defendant's motion  
09:38:42 9 insofar as the investigation is concerned to strike the  
09:38:48 10 testimony regarding the level of due diligence that Birchall  
09:39:01 11 used in hiring Howard. In my view, that goes beyond the  
09:39:05 12 scope of the teaching of the case of her ^ Herbert versus  
09:39:12 13 Landau.

09:39:12 14                   Similarly, I am striking all the testimony  
09:39:17 15 about the \$10,000 bonus, because in my view, that goes beyond  
09:39:27 16 ^ Herbert versus Landau. The other matters we discussed can  
09:39:32 17 be used.

09:39:35 18                   Bring the jury in, Paul.

09:39:37 19                   COURT CLERK: Yes, Your Honor.

09:41:41 20                   (Following held in the presence of the jury.)

09:41:42 21                   **THE COURT:** Good morning, members of the jury.  
09:41:46 22 Thank you once again for being so punctual.

09:41:49 23                   My apologies. The Court wasn't as punctual,  
09:41:52 24 but we weren't dilly-dallying, we were taking up some matters  
09:41:58 25 that didn't concern you, but we resolved those.

09:42:01 1 So, before I give you the instructions, I  
09:42:04 2 want to make two rulings that you have to abide by. First, I  
09:42:14 3 am striking from the record all the testimony of Mr. Birchall  
09:42:21 4 regarding the degree of due diligence he used in hiring the  
09:42:27 5 investigator, Howard. And second, I am striking from the  
09:42:36 6 record any testimony about the \$10,000 bonus payment that you  
09:42:51 7 heard about.

09:42:52 8 When I strike testimony from the record, you  
09:42:57 9 have to abide by that. You cannot consider that testimony.  
09:43:02 10 It can't be argued. It is as though it didn't occur. And  
09:43:08 11 having --

09:43:09 12 And you shouldn't speculate regarding the  
09:43:12 13 reasons why I struck the testimony. That's for me to decide.  
09:43:18 14 Okay?

09:43:21 15 And as I told you, it should be clear  
09:43:25 16 throughout, the decision is solely yours, not mine, regarding  
09:43:32 17 the evidence. Okay.

09:43:33 18 (JURY CHARGE)

09:43:33 19 Members of the jury, now that you have heard  
09:43:38 20 all of the evidence, you will shortly hear the arguments of  
09:43:41 21 the lawyers, it is my duty to instruct you as to the law of  
09:43:45 22 the case. A copy of these instructions will be sent with you  
09:43:48 23 to the jury room when you deliberate.

09:43:52 24 You must not infer from these instructions or  
09:43:55 25 from anything I may say -- I have said or done as indicating

09:43:59 1 that I have an opinion regarding the evidence of what your  
09:44:03 2 verdict should be. It is your duty to find the facts from  
09:44:08 3 all the evidence in the case. To those facts, you will apply  
09:44:11 4 the law as I give it to you. You must follow the law as I  
09:44:15 5 give it to you whether you agree with it or not, and you must  
09:44:19 6 not be influenced by any personal likes, dislikes, opinions,  
09:44:24 7 prejudices or sympathy. That means you must decide the case  
09:44:27 8 solely on the evidence before you. You will recall that you  
09:44:29 9 took an oath to do so.

09:44:31 10                   The plaintiff must persuade you by the  
09:44:35 11 evidence presented in court that he is required to prove --  
09:44:42 12 that what he is required to prove is more likely to be true  
09:44:45 13 than not true. This is referred to as the burden of proof.

09:44:52 14                   After weighing all of the evidence, if you  
09:44:55 15 cannot decide that something is more likely to be true than  
09:44:57 16 not true, you must conclude that the plaintiff did not prove  
09:45:01 17 it. You should consider all the evidence no matter which  
09:45:05 18 party produced the evidence.

09:45:07 19                   In criminal trials, the prosecution must  
09:45:09 20 prove the defendant is guilty beyond a reasonable doubt. But  
09:45:13 21 in civil trials, such as this one, the plaintiff is required  
09:45:17 22 to prove something is more likely to be true than not true.

09:45:22 23                   The evidence you are to consider in deciding  
09:45:25 24 what the facts are consists of the sworn testimony of any  
09:45:29 25 witness, the exhibits which are received into evidence, and

09:45:33 1 any facts to which the lawyers have agreed.

09:45:37 2 You may have heard the term "stipulation"  
09:45:44 3 there in the case. That essentially means that the lawyers  
09:45:46 4 have agreed to that fact, and no further evidence regarding  
09:45:49 5 that fact need be produced.

09:45:51 6 In reaching your verdict, you may consider  
09:45:54 7 only the testimony and exhibits received into evidence.  
09:45:59 8 Certain things are not evidence, and you may not consider  
09:46:03 9 them in deciding what the facts are. I will list them for  
09:46:06 10 you.

09:46:06 11 One: Arguments and statements by lawyers are  
09:46:10 12 not evidence. The lawyers are not witnesses. What they have  
09:46:13 13 said in their opening statements, what they shortly will say  
09:46:18 14 in their closing arguments and at other times is intended to  
09:46:23 15 help you interpret the evidence, but it is not evidence. If  
09:46:26 16 the facts as you remember them differ from the way the  
09:46:29 17 lawyers have stated them, your memory of them controls.

09:46:33 18 Questions and objections of lawyers are not  
09:46:35 19 evidence. Lawyers have a duty to their clients to object  
09:46:39 20 when they believe a question is improper under the Rules of  
09:46:44 21 Evidence. You should not be influenced by the objection or  
09:46:47 22 by the Court's ruling on it.

09:46:49 23 Testimony that has been excluded or stricken  
09:46:52 24 or that you have been instructed to disregard is not evidence  
09:46:55 25 and must not be considered. In addition, sometimes testimony

09:47:00 1 and exhibits are received only for a limited purpose. If I  
09:47:04 2 have given such a limiting instruction, you must follow it.

09:47:08 3 Anything you may have seen or heard when the  
09:47:12 4 Court was not in session is not evidence. You are to decide  
09:47:18 5 the case solely on the evidence received at the trial. Some  
09:47:21 6 evidence may be admitted for a limited purpose. If I gave  
09:47:27 7 that instruction, you must follow it.

09:47:33 8 Evidence may be direct or circumstantial.  
09:47:36 9 Direct evidence is direct proof of a fact such as testimony  
09:47:40 10 by a witness about what that witness personally saw or heard  
09:47:45 11 or did. Circumstantial evidence is proof of one or more  
09:47:49 12 facts from which you could find another fact. You should  
09:47:52 13 consider both kinds of evidence. The law makes no  
09:47:54 14 distinction between the weight to be given to either direct  
09:47:58 15 or circumstantial evidence. It is for you to decide how much  
09:48:02 16 weight to give to any evidence.

09:48:08 17 In deciding the facts in this case, you may  
09:48:18 18 have to decide which testimony to believe and which testimony  
09:48:21 19 not to believe. You may believe everything a witness says or  
09:48:26 20 part of it or none of it.

09:48:27 21 Proof of a fact does not necessarily depend  
09:48:30 22 on the number of witnesses who testify about it. In  
09:48:34 23 considering the testimony of any witness, you may take into  
09:48:38 24 account: One, the opportunity and ability of the witnesses  
09:48:42 25 to see or hear or know the things testified to; two, the

09:48:47 1 witness' memory; three, the witness's manner while  
09:48:51 2 testifying; four, the witness's interest in the outcome of  
09:48:54 3 the case, and any bias or prejudice; five, whether other  
09:48:58 4 evidence contradicted the witness's testimony, the  
09:49:01 5 reasonableness of the witness's testimony in light of all the  
09:49:05 6 evidence and any other factors that bear on believability.

09:49:08 7 The weight of the evidence as to a fact does  
09:49:11 8 not necessarily depend on the number of witnesses who testify  
09:49:14 9 about it. Whether or not you took notes, you should rely on  
09:49:19 10 your own memory of the evidence. Notes are only to assist  
09:49:23 11 your memory. You should not be overly influenced by your  
09:49:27 12 notes or those of your fellow jurors's.

09:49:31 13 You've heard testimony from an expert who  
09:49:34 14 testified to opinions and the reasons for his opinion. The  
09:49:38 15 opinion testimony is allowed because of the education or  
09:49:42 16 experience of this witness. Such testimony should be judged  
09:49:47 17 like any other testimony. You may accept it or reject it and  
09:49:50 18 give it as much weigh as you think it deserves, considering  
09:49:52 19 the witness's education and experience, the reasons given for  
09:49:56 20 the opinion and all the other evidence in the case.

09:49:58 21 Mr. Unsworth claims that Mr. Musk harmed him  
09:50:03 22 by making one or more of the statements: "I never saw this  
09:50:08 23 British expat guy who lives in Thailand (sus) at any point  
09:50:15 24 when we were in the caves.

09:50:16 25 Two -- second statement: "Sorry pedo guy.

09:50:19 1 You really did ask for it."

09:50:21 2 Three: "Bet you a signed dollar it's true."

09:50:25 3 To establish liability for this claim,

09:50:28 4 Mr. Unsworth must prove all of the following:

09:50:30 5 One: That Mr. Musk made one or more of the

09:50:35 6 statements to persons other than Mr. Unsworth.

09:50:38 7 Two: That these people reasonably understood

09:50:41 8 that the statements were about Mr. Unsworth.

09:50:44 9 Three: That these people reasonably

09:50:46 10 understood the statements to mean that Mr. Unsworth was a

09:50:52 11 pedophile; that is, Mr. Unsworth had engaged in a sexual act

09:50:56 12 with a child.

09:50:57 13 Four: That the statements were false.

09:50:59 14 And five: That Mr. Musk failed to use

09:51:03 15 reasonable care to determine the truth or falsity of the

09:51:06 16 statements.

09:51:07 17 For Mr. Unsworth to recover, Mr. Musk's

09:51:11 18 statements must have been statements of fact, not opinion.

09:51:14 19 "A statement of fact" is one that can be

09:51:17 20 proved to be true or false. In some circumstances Mr.

09:51:23 21 Unsworth may recover if a statement phrased as an opinion

09:51:27 22 implies that a false statement of fact is true.

09:51:29 23 In deciding this issue, you should consider

09:51:31 24 whether the average reader would conclude from the language

09:51:34 25 of the statement and its context that Mr. Musk was implying

09:51:39 1 that a false statement of fact is true.

09:51:42 2 The words "statement" in these instructions  
09:51:46 3 refers to any form of communication or representation,  
09:51:50 4 including spoken or written words or pictures.

09:51:54 5 It is the duty of the Court to instruct you  
09:51:57 6 about the measure of damages. By instructing you on damages,  
09:52:02 7 the Court does not mean to suggest for which party your  
09:52:05 8 verdict should be rendered.

09:52:07 9 If you find for the plaintiff, you must  
09:52:09 10 determine the plaintiff's damages. The plaintiff has the  
09:52:13 11 burden of proving actual damages by a preponderance of the  
09:52:15 12 evidence. The plaintiff has the burden of proving assumed  
09:52:19 13 and punitive damages by clear and convincing evidence.

09:52:23 14 "Damages" means the amount of money that will  
09:52:26 15 reasonably and fairly compensate the plaintiff for any injury  
09:52:32 16 you find was caused by the defendant.

09:52:35 17 It is for you to determine what damages, if  
09:52:38 18 any, have been proved. Your award must be based upon  
09:52:42 19 evidence and not upon speculation, guesswork and conjecture.

09:53:27 20 When a party has the burden of proving any  
09:53:31 21 claim or defense by a clear and convincing evidence, in this  
09:53:34 22 case, it is the plaintiff's burden, it means that the party  
09:53:37 23 must present evidence that leaves you with a firm belief or  
09:53:41 24 conviction that it is highly probable and that the factual  
09:53:45 25 contentions of the claim are true.

09:53:48 1                   This is a higher standard of proof than proof  
09:53:51 2 by a preponderance of the evidence, but it does not require  
09:53:55 3 proof beyond a reasonable doubt. If Mr. Unsworth has proved  
09:54:06 4 all of the above, he's entitled to recover his actual damages  
09:54:09 5 if he proves that Mr. Musk's wrongful conduct was a  
09:54:14 6 substantial factor in causing him any of the following: Harm  
09:54:19 7 to his reputation or shame, mortification or hurt feelings.

09:54:24 8                   Even if Mr. Unsworth has not proved any  
09:54:29 9 actual damages or harm to reputation or shame, mortification  
09:54:35 10 or hurt feelings but proves by a clear and convincing  
09:54:38 11 evidence that Mr. Musk knew the statements were false and --  
09:54:47 12 or that he had serious doubts about the truth of the  
09:54:50 13 statements, then the law assumes Mr. Unsworth's reputation  
09:54:54 14 has been harmed and that he has suffered shame, mortification  
09:54:58 15 or hurt feelings. Without presenting any evidence of damage,  
09:55:01 16 Mr. Unsworth is entitled to receive compensation for his  
09:55:04 17 assumed harm in whatever sum you believe is reasonable. To  
09:55:10 18 award assumed damages, you must award at least a nominal sum  
09:55:15 19 such as one dollar.

09:55:16 20                   Assumed damages should be reduced by any  
09:55:19 21 amount you have already awarded as actual damages.

09:55:25 22                   Mr. Unsworth may also recover damages to  
09:55:29 23 punish Mr. Musk if Mr. Unsworth proves by clear and  
09:55:34 24 convincing evidence that Mr. Musk either knew the statements  
09:55:37 25 were false or had serious doubts about the truth of the

09:55:41 1 statements, and that he acted with malice, oppression or  
09:55:44 2 fraud.

09:55:45 3 If you decide that Mr. Musk's conduct caused  
09:55:49 4 Mr. Unsworth harm, you must decide whether that conduct  
09:55:52 5 justifies an award of punitive damages. The purpose of  
09:55:56 6 punitive damages are to punish a wrongdoer for the conduct  
09:56:01 7 that harmed the plaintiff and discourage similar conduct in  
09:56:04 8 the future. You may award punitive damages only if Mr.  
09:56:09 9 Unsworth proves by clear and convincing evidence that Mr.  
09:56:12 10 Musk knew the statements were false or that he had serious  
09:56:15 11 doubts about the truth of the statements, and that Mr. Musk  
09:56:19 12 engaged in that conduct with malice, oppression or fraud.

09:56:23 13 "Malice" means that Mr. Musk acted with the  
09:56:26 14 intent to cause injury or that Mr. Musk's conduct was  
09:56:29 15 despicable and was done with the willful and knowing  
09:56:34 16 disregard of the rights or safety of another.

09:56:36 17 A person acts with knowing disregard when he  
09:56:39 18 or she is aware of the probable dangerous consequences of his  
09:56:43 19 or her conduct and deliberately fails to avoid those  
09:56:48 20 consequences.

09:56:48 21 "Oppression" means that Mr. Musk's conduct  
09:56:51 22 was despicable and subjected ^ Mr. Musk to cruel and unjust  
09:56:56 23 hardship in knowing -- in knowing disregard of his rights.

09:57:00 24 "Despicable conduct" is conduct that is so  
09:57:04 25 vile, base or contemptible that it should be looked down on

09:57:10 1 and despised by reasonable people.

09:57:12 2 "Fraud" means that Mr. Musk intentionally  
09:57:13 3 misrepresented or concealed a material fact and did so  
09:57:17 4 intending to harm Mr. Unsworth.

09:57:19 5 There is no fixed amount for determining the  
09:57:22 6 amount of punitive damages, and you are not to award -- and  
09:57:25 7 you are not required to award any punitive damages.

09:57:29 8 If you decide to award punitive damages, you  
09:57:32 9 should consider all of the following factors in determining  
09:57:36 10 the amount: How reprehensible was Mr. Musk's conduct? In  
09:57:42 11 deciding how reprehensible Mr. Musk's conduct was, you may  
09:57:47 12 consider, among other factors, whether the conduct caused  
09:57:50 13 physical harm, whether Mr. Musk disregarded the health or  
09:57:54 14 safety of others, whether Mr. Unsworth was financially weak  
09:57:57 15 or vulnerable and Mr. Musk knew Mr. Unsworth was financially  
09:58:03 16 weak or vulnerable and took advantage of him, whether Mr.  
09:58:06 17 Musk's conduct involved the pattern or practice, and whether  
09:58:09 18 Mr. Musk's conduct acted with trickery or deceit.

09:58:14 19 You also have to determine whether there is a  
09:58:16 20 reasonable relationship between the amount of punitive  
09:58:19 21 damages and Mr. Unsworth's harm or between the amount of  
09:58:23 22 punitive damages and potential harm to Mr. Unsworth that Mr.  
09:58:28 23 Musk was likely -- Mr. Musk was -- Mr. Musk knew it was  
09:58:34 24 likely to occur because of his conduct.

09:58:36 25 In view of Mr. Musk's financial condition,

09:58:42 1 you should also consider that what amount is necessary to  
09:58:45 2 punish him or discourage future wrongful conduct. You may  
09:58:50 3 not increase the punitive award above an amount that is  
09:58:55 4 otherwise appropriate merely because Mr. Musk has substantial  
09:58:59 5 financial resources.

09:59:00 6 Punitive damages may not be used to punish  
09:59:03 7 Mr. Musk for the impact of his alleged misconduct on persons  
09:59:09 8 other than Mr. Unsworth.

09:59:12 9 You will get a copy of these instructions to  
09:59:17 10 consult in the jury room.

09:59:38 11 You will shortly hear the -- momentarily --  
09:59:42 12 the arguments of the lawyers. You will note that the  
09:59:46 13 plaintiff goes first, because they have the burden of proof.  
09:59:50 14 The defendant then gets a chance to argue, and the plaintiff  
09:59:53 15 has a chance to argue again, because they have the burden of  
10:00:00 16 proof.

10:00:00 17 And, again, this is just a guide to you. You  
10:00:09 18 have to follow the instructions but -- in assessing the  
10:00:13 19 evidence in the case. In looking at the evidence, your first  
10:00:18 20 task is to only look at the evidence regarding the July 15th  
10:00:24 21 tweet, up to that time. That is the rescue, the CNN  
10:00:33 22 interview and the July 15 tweet. That should be your first  
10:00:37 23 examination.

10:00:39 24 In the context of the evidence, your first  
10:00:43 25 task is to decide if plaintiff has proven his case of

10:00:47 1 defamation. If you find a reasonable person in the context  
10:00:57 2 would conclude that defendant called plaintiff a pedophile,  
10:01:01 3 that is someone who has sexual encounter with a child, then  
10:01:05 4 you may continue to analyze if the defendant acted  
10:01:12 5 maliciously and follow the instructions I gave you regarding  
10:01:16 6 damages. That's sort of a construct as to how you should  
10:01:22 7 approach the evidence.

10:01:23 8 Okay, now, we'll hear the arguments.

10:01:27 9 Okay, first the plaintiff.

10:01:37 10 **MR. WOOD:** May I proceed, Your Honor, for the  
10:01:39 11 plaintiff.

10:01:40 12 **THE COURT:** Yes.

10:01:43 13 (CLOSING ARGUMENTS BY PLAINTIFF)

10:01:50 14 **MR. WOOD:** Good morning, ladies and gentlemen.

10:01:52 15 **THE COURT:** No one can hear you beyond the  
10:01:52 16 microphone.

10:01:56 17 **MR. WOOD:** Good morning. It's the first time I've  
10:01:57 18 actually, under the rules of our procedure, been allowed to  
10:02:02 19 speak with you. So, it's nice to be able to finally do that.

10:02:06 20 You've been here every day, on time, as late  
10:02:13 21 as the Judge asked you to be here, and we all have been here  
10:02:18 22 every day with you.

10:02:24 23 The Judge -- the Court has used the phrase  
10:02:29 24 that you will hear the arguments, and that's what many, many,  
10:02:34 25 if not most judicial officers and lawyers call this the

10:02:41 1 closing arguments. I'm going to give you heads up. I'm not  
10:02:48 2 here to argue with you. I call these closing remarks.

10:02:56 3 In a couple of hours, maybe shorter, you will  
10:03:00 4 take the evidence: The documents, the testimony. You will  
10:03:05 5 take the evidence into the jury room, and you will be called  
10:03:11 6 upon to review that evidence, and you'll be called upon to  
10:03:15 7 answer certain questions from that evidence and just that  
10:03:23 8 evidence, because that's what you swore to do.

10:03:31 9 And the answers to the questions you resolve  
10:03:33 10 in the jury room are supposed to end up when you come back  
10:03:38 11 into this courtroom when you've answered those questions, you  
10:03:44 12 are going to deliver your verdict. And your obligation and  
10:03:53 13 promise is to deliver a verdict that speaks the truth.

10:04:08 14 In my closing remarks, this is the portion of  
10:04:12 15 the trial where I, to fulfill my professional  
10:04:16 16 responsibilities to Vernon Unsworth, I have the professional  
10:04:23 17 responsibility to discuss with you what the answers to those  
10:04:29 18 questions should be based on the evidence.

10:04:41 19 And then after you go out to deliberate, my  
10:04:47 20 professional responsibilities, the job that I undertook as a  
10:04:55 21 lawyer and a member of this system of justice, will be done.  
10:05:05 22 I will have fulfilled my obligation to my client, Vernon  
10:05:11 23 Unsworth.

10:05:19 24 So, when you go out to the jury room to  
10:05:21 25 deliberate, whatever weight and burdens I've carried for him

10:05:27 1 for the year and three months that I've represented him, they  
10:05:30 2 get taken off of my shoulders, and I get to turn it over to  
10:05:39 3 you. And after your verdict is returned, and your verdict  
10:05:50 4 speaks the truth, I'll take a couple of hours of rest maybe  
10:05:55 5 even overnight and tomorrow morning, if we get a verdict  
10:05:57 6 today, I'll go back home to Atlanta, Georgia. I'll travel  
10:06:04 7 that 2300 miles, and I'll go back home, and I will resume my  
10:06:08 8 normal life, anyone's definition of normal. I'll go back and  
10:06:16 9 see my kids and one-year-old puppy. I get to go back to my  
10:06:23 10 normal life. And after you have returned your verdict, you  
10:06:26 11 will get to go back and return to your normal life, your job,  
10:06:29 12 your family, your hobbies. Because after your verdict is  
10:06:35 13 done, my responsibility is fulfilled, and your responsibility  
10:06:41 14 is fulfilled.

10:06:47 15 I chose to be here. I chose to be here every  
10:06:57 16 day of this trial when I promised and agreed to Vernon  
10:07:03 17 Unsworth that I would take his case to court to get him a  
10:07:06 18 verdict that spoke the truth.

10:07:12 19 You didn't sign up a year and three months  
10:07:17 20 ago to spend the last four days of your life in this  
10:07:19 21 courtroom. I'm here because of my professional  
10:07:29 22 responsibility. You are here fulfilling your civic duty,  
10:07:35 23 leaving your homes, coming to this courtroom. And for that,  
10:07:41 24 as sincerely as I can tell you on behalf of Mr. Unsworth and  
10:07:51 25 every member of the team that we've worked so hard for him, I

10:07:57 1 thank you. Thank you for your service. Thank you for being  
10:08:03 2 here to fulfill your civic duty.

10:08:08 3 Our roles in our legal system in some ways  
10:08:24 4 are equal, because when I fulfill my role and you fulfill  
10:08:31 5 your role, you sustain for the future the rule of law.

10:08:49 6 Our society is built beginning with one  
10:08:53 7 foundational principle. It is built on one foundation. We  
10:09:05 8 are a society governed by the rule of law. And if we're  
10:09:11 9 going to maintain that system of justice, and I believe we  
10:09:16 10 must, two things have to occur. The law must be obeyed by  
10:09:28 11 all. The law must be obeyed by all. Rich and poor alike.

10:09:39 12 And the second thing we have to have occur in  
10:09:42 13 order to maintain our system of justice that our society is  
10:09:46 14 based on the rule of law, if someone breaks the law, whether  
10:09:57 15 they are rich or of modest means, whether they were 23 -- or  
10:10:04 16 \$20 billion or whether they make 30 some thousand dollars a  
10:10:14 17 year, it is required that when that person breaks the law,  
10:10:20 18 there must be fair and appropriate punishment, rich and poor  
10:10:28 19 alike.

10:10:30 20 We must obey the law; and if we break the  
10:10:36 21 law, we deserve and must be subjected to fair and appropriate  
10:10:41 22 punishment. Those two things have to occur. It has to occur  
10:10:49 23 in order to maintain our governing foundational principle,  
10:10:56 24 that we are a society governed by the rule of law. Justice.

10:11:10 25 I thank you -- I want to thank all those

10:11:16 1 people and Mr. Unsworth team, too. In your presence, I want  
10:11:21 2 you to know I thank them, and I thank Mr. Unsworth, in your  
10:11:26 3 presence, for forwarding me the professional opportunity or  
10:11:37 4 to come into this courtroom for him, to do for him what I've  
10:11:45 5 been doing for 43 years since I took an oath as a lawyer, to  
10:11:52 6 advocate for justice and truth.

10:11:55 7 Thank you for the opportunity, Mr. Unsworth.  
10:11:57 8 It has been the privilege of my career.

10:12:05 9 I not only thank you, I want to tell you that  
10:12:09 10 I respect you. And I really know certain limited information  
10:12:20 11 about you. I have certain limited information about each of  
10:12:25 12 you. You had to provide it to the Court. And based on that  
10:12:32 13 limited information and knowing the role that you play that  
10:12:36 14 is vital to our system of justice, a system I love, and you  
10:12:40 15 do, too, I respect you. Because I believe that you will do  
10:12:53 16 your duty, that you will have the courage, the courage to  
10:13:05 17 come back and tell the truth by your verdict in this  
10:13:11 18 courtroom.

10:13:13 19 You will have the courage to say it and say  
10:13:15 20 it unequivocally and clearly, regardless of who's sitting  
10:13:20 21 here when you come back in. You will confront everybody in  
10:13:24 22 this room, Mr. Unsworth and Mr. Musk. You will have the  
10:13:29 23 courage to look at Mr. Unsworth and Mr. Musk regardless of  
10:13:34 24 where your verdict goes, for Mr. Unsworth, for Mr. Musk, or  
10:13:39 25 for Mr. Unsworth and against Mr. Musk, you will have the

10:13:44 1 courage to come in here and state your verdict, to state the  
10:13:48 2 truth, clearly without apology, without hesitation, without  
10:13:53 3 concern of what will people think that I found this, because  
10:13:58 4 some of your findings will not necessarily be so easy, but I  
10:14:05 5 believe you have the courage to do it, and I respect you for  
10:14:07 6 that courage.

10:14:07 7 Now, I want to try to make your -- I want to  
10:14:24 8 try to make your job of going there and look at all this  
10:14:28 9 evidence. I want to try to make it a little easier for you,  
10:14:33 10 and in the process makes it easier for me when I try to  
10:14:39 11 discuss it in my closing remarks, because I would suggest to  
10:14:49 12 you that there is only one question and one answer to that  
10:14:59 13 question, and once you have come to that answer, to that  
10:15:02 14 first -- the first answer, once you -- once you go in there  
10:15:07 15 and say: Well, I know this. This is what I know. The  
10:15:12 16 other -- the other questions become much easier.

10:15:17 17 And I have been told, and it's courtesy and  
10:15:22 18 it's respect, sometimes we all cross the line and we know  
10:15:28 19 when we say something, shouldn't have said that.

10:15:32 20 I'm going to say something to you that most  
10:15:35 21 lawyers, law professors and even the average person, like  
10:15:42 22 you, represented, they don't say it to someone unless it is  
10:15:51 23 absolutely proven beyond any doubt whatsoever, beyond any  
10:15:58 24 doubt whatsoever, that under the evidence, that under the  
10:16:01 25 evidence you look at someone by your verdict and say: You

10:16:07 1 have not told me the truth. And if you believe that they  
10:16:15 2 have not -- that person has not told you the truth, then I'm  
10:16:19 3 going to have the courage that I have asked you to have, and  
10:16:22 4 I'm going to have it right here in this courtroom, with Mr.  
10:16:26 5 Musk sitting to my right, I'm going to tell you that the  
10:16:32 6 answer that you need to solve all the other questions that  
10:16:35 7 you have to answer is found in one simple truth: Elon Musk  
10:16:44 8 is a liar.

10:16:54 9 How do I know it? I don't know Elon Musk.  
10:17:01 10 I've seen him in his deposition, I've seen him a couple of  
10:17:05 11 times in the courtroom, he walked by me. I've never shaken  
10:17:09 12 Elon Musk's hand. He refused to shake my hand.

10:17:13 13 **THE COURT:** You're getting beyond the evidence.  
10:17:14 14 I've given you some leeway. Argue anything you like, but  
10:17:18 15 base it upon the evidence. If you think that Mr. Musk is  
10:17:23 16 untruthful, relate it to the evidence in the case.

10:17:25 17 Proceed.

10:17:27 18 **MR. WOOD:** Thank you, Your Honor.

10:17:29 19 That's exactly what I wanted to tell you.  
10:17:32 20 Since I don't really know him, the only reason that I can  
10:17:35 21 come to that harsh but honest truth about him is because of  
10:17:41 22 the evidence.

10:17:47 23 He did not take the stand and admit, as  
10:17:51 24 direct evidence, that: I lied. He did not do that. But the  
10:17:57 25 Judge has just informed you, the Court, that that's direct

10:18:04 1 evidence. He didn't do it. Not many people do. Not many  
10:18:07 2 people have the ability to look over and go: I didn't -- I  
10:18:13 3 didn't do it.

10:18:14 4 You know, their state of mind that leaves  
10:18:17 5 them to say: I did it, and I take responsibility for it,  
10:18:22 6 versus: I'm not going to take responsibility for it. I'm  
10:18:26 7 going to dodge around it, I'm going to dance around it, I'm  
10:18:31 8 going to obfuscate around it. They try not to have to admit  
10:18:37 9 the painful truth on the witness stand: I lied.

10:18:40 10 But you get to look at not just that  
10:18:43 11 evidence, direct evidence, which one would never really  
10:18:44 12 expect. No one is really going to come in here and say I  
10:18:47 13 lied. You get to look at the circumstantial evidence, and  
10:18:53 14 the circumstantial evidence, ladies and gentlemen,  
10:19:01 15 undisputedly establishes that truth about Elon Musk, and what  
10:19:09 16 he talked about and what he testified about in relationship  
10:19:13 17 to one, one of many heroes that banded together in July,  
10:19:28 18 June-July of 2018 to save the lives of 12 children and their  
10:19:31 19 coach.

10:19:37 20 If I were to ever find myself -- and I don't  
10:19:40 21 want to be there -- but if I were ever to find myself trapped  
10:19:45 22 under water or in an area where I knew I had to go a mile  
10:19:50 23 under water to try to live, if I ever had that happen, I  
10:20:04 24 would want to look up and see the faces of Vernon Unsworth  
10:20:08 25 and Rick Stanton, because I know that with those faces, I've

10:20:15 1 got a real chance to live and survive, and if I'm in that  
10:20:23 2 situation, those are the faces that I want to see, and with  
10:20:29 3 all due respect, I don't want to look up and see the face of  
10:20:32 4 Elon Musk, because when I see that, if that's who's going to  
10:20:38 5 save me, I have very little, if any, chance at all to live  
10:20:41 6 and survive.

10:20:43 7 What did Vernon Unsworth do? We talked about  
10:20:49 8 in this trial -- I heard the expression: Man versus man,  
10:20:56 9 insult very insult.

10:20:58 10 Let's talk about Vernon Unsworth for just a  
10:21:01 11 moment. And you probably, I would suggest, learned more  
10:21:05 12 about Vernon Unsworth from Rick Stanton than you even did  
10:21:12 13 from the compelling and truthful and sometimes gut-wrenching  
10:21:14 14 testimony of Vernon Unsworth. You probably learned more  
10:21:18 15 about Vernon Unsworth from Rick Stanton than you did from  
10:21:22 16 Vernon Unsworth.

10:21:23 17 Because it was Rick Stanton that told you,  
10:21:27 18 and others agree, that there was a decision made to bring in  
10:21:30 19 the world's most expert -- not cave divers -- cave rescue  
10:21:40 20 divers. Bring in the type of person, man or woman that has  
10:21:48 21 that unique quality in there makeup, in their genes, that  
10:21:56 22 they will walk into a dangerous situation without hesitation,  
10:21:59 23 putting their own lives at risk to save the life of someone  
10:22:09 24 they don't even know. That's who Rick Stanton is.

10:22:12 25 And what did Rick Stanton tell you about

10:22:16 1 Vernon Unsworth? That Rick Stanton could not have done his  
10:22:20 2 expert job that he has the courage to do and the training to  
10:22:23 3 do and the experience to do, he could not have done it  
10:22:29 4 without Vernon Unsworth, because Vernon knew that cave.  
10:22:34 5 Vernon knew the details of that cave, and he knew where the  
10:22:37 6 routes would leave and the obstacles that would have to be  
10:22:41 7 overcome, and he, because of that knowledge, did what for Mr.  
10:22:46 8 Stanton and his fellow rescue divers, cave rescue divers.

10:22:49 9                         The first thing they had to do was search.  
10:22:54 10 They had to find these boys. These boys, by the time Rick  
10:23:00 11 Stanton arrived, had been lost and trapped without food or  
10:23:05 12 water for almost ten days. It wouldn't have mattered saying,  
10:23:21 13 all right, let's send out all the people that are willing to  
10:23:24 14 help, spread out over this hillside and try to find them.

10:23:27 15                         No, you can't go through the hillside when  
10:23:30 16 you're in a narrow, winding underground cave. You've got to  
10:23:34 17 go out with specific searches if you're going to find them.  
10:23:38 18 And if you've got to go under water for nearly an hour and a  
10:23:43 19 half, in water so dark that you can't, as Rick Stanton told  
10:23:47 20 you, you can't see further than two or three inches ahead of  
10:23:52 21 you, and you're only able to sustain your life while you're  
10:23:57 22 there by virtue of the oxygen that you take with you. You've  
10:23:59 23 got to have enough rope, because you're pulling in the dark,  
10:24:02 24 you've got to have enough rope to get there to the area that  
10:24:06 25 you want to search; and if the kids aren't there, you got to

10:24:09 1 have enough rope and oxygen to get there and enough oxygen to  
10:24:13 2 get back so you can search in another place.

10:24:18 3 The person that was responsible for telling  
10:24:21 4 these expert, brave cave rescue divers where to search and  
10:24:32 5 how much rope they would need to get that that area to see if  
10:24:37 6 they're there and get back, enough oxygen to get there and  
10:24:41 7 get back, the person that told those divers what to take and  
10:24:48 8 where to go was Vernon Unsworth.

10:24:51 9 And then a time came where after the second  
10:24:54 10 search they didn't find them, and they huddled back together  
10:25:00 11 with Vernon there with them and said: Where do we go next?  
10:25:04 12 Where do we look next, Mr. Unsworth? He said go here, try  
10:25:09 13 here. If they weren't there and weren't there, try here.

10:25:13 14 Okay, we'll go. How much rope do we need to  
10:25:16 15 get there and back? How much oxygen do we need to get there  
10:25:20 16 and back? And he told them. And they went, and they found  
10:25:32 17 those boys.

10:25:34 18 On July -- the early part of July they found  
10:25:39 19 those boys and their coach. And having found them, thanks to  
10:25:46 20 Vernon, they had enough oxygen and the rope was in place to  
10:25:49 21 get back and tell everybody: We have found them.

10:25:53 22 Now the question becomes: How in the world,  
10:25:56 23 short of a miracle from God, if not a miracle from God, which  
10:26:01 24 is what I believe this was, how do we get him out here? How  
10:26:05 25 do we get them back outside of that cave.

10:26:08 1 At that point in time when the inquiry  
10:26:10 2 shifted to how do we get them out, Vernon's role was not as  
10:26:14 3 significant. He's done some diving, but he's not a cave  
10:26:20 4 diver, he certainly never claimed to be a cave rescue diver.  
10:26:27 5 But after he had fulfilled his most vital and significant  
10:26:34 6 role and really didn't need to be there any longer. Having  
10:26:40 7 been there for times, as he told you, for three days, 24/7.  
10:26:50 8 He could have gone home. He could have gone if he had a  
10:26:54 9 business meeting in Shanghai, he could have said: I've got  
10:26:59 10 to go. I got a business meeting. He could have gone home  
10:27:02 11 and would still be an integral part of the rescue team that  
10:27:07 12 saved these kids's lives.

10:27:10 13 Did he go home? The evidence gives you the  
10:27:13 14 answer: No, he did not. He stayed right there to do  
10:27:18 15 whatever anyone would ask of him to help those divers as they  
10:27:22 16 brought these kids out to the very end.

10:27:26 17 He was there working the skids which were  
10:27:31 18 used one to another to another to make the final exit from  
10:27:36 19 that cave by these boys. They were not walking out of this  
10:27:42 20 cave, they came out in a skid, and he was one of those people  
10:27:49 21 that carried a skid. He didn't leave, because his -- his  
10:27:55 22 desire to be there and to help these kids, his desire to do  
10:27:59 23 that was genuine. The foremost concern in this gentleman's  
10:28:08 24 mind was one thing: I'm going to save those young boys and  
10:28:14 25 their coach. So, he stayed until they were saved.

10:28:28 1 Somewhere in the last two or three days,  
10:28:31 2 whether it was the 5th or the 6th of July, I know it was  
10:28:36 3 after the 4th because Mr. Musk accepted an apology -- or a  
10:28:42 4 request, as he perceived it, by some Twitter person: *Is*  
10:28:46 5 *anything you can do to help @elonmusk?* He has over 22  
10:28:53 6 million followers -- at the time. He got involved, and they  
10:29:02 7 talked for one about how could we help.

10:29:06 8 I don't accept that he was on Twitter talking  
10:29:10 9 about this. The evidence has tweet after tweet after tweet  
10:29:14 10 after tweet. It has a video of the pool. You remember the  
10:29:17 11 swimming pool in a high school in Los Angeles where they put  
10:29:20 12 a small man, not a child, into that tube that they had made,  
10:29:24 13 and they put two divers, and they brought that person down  
10:29:29 14 the length of the pool where the water was clear, the  
10:29:35 15 obstacles were planned, they were not unknown, and they were  
10:29:41 16 not dangerous. They didn't test it in the dark and murky  
10:29:54 17 waters of Tham Luang Cave. They tested in the clear water of  
10:30:00 18 a swimming pool, with specifically planned obstacles, lines,  
10:30:04 19 to try to go through it like an obstacle course. They didn't  
10:30:04 20 test it in the unknown, the jagged rocks, the pinched areas  
10:30:10 21 where you couldn't go straight, you have to go under to get  
10:30:13 22 to the next side. They didn't test it there. That remains  
10:30:19 23 unknown.

10:30:21 24 But I noted on the video that it took two  
10:30:28 25 cave -- or divers in the video --

10:30:30 1                   The individuals that did that were not cave  
10:30:34 2 rescue divers, but it took two of them, it took two of them  
10:30:39 3 to get that tube down the pool.

10:30:43 4                   These young boys were brought out four at a  
10:30:48 5 time, one after the other, four on July the 8th, four on July  
10:30:54 6 the 9th, and final five on July the 10th. And they were  
10:31:03 7 brought out with one diver carrying one child. One diver had  
10:31:12 8 to put his life at risk to carry that child, not two. The  
10:31:18 9 tube would have put two divers' lives at risk per child.

10:31:23 10                  You don't go into a rescue to increase your  
10:31:26 11 risk that the rescuers may not make it themselves, you try to  
10:31:33 12 plan it so you minimize as much as you humanly can to risk  
10:31:37 13 that those divers potentially face when they go do it.

10:31:41 14                  I am not going to hesitate, having once told  
10:31:46 15 you that I believe, under the evidence, that Elon Musk is a  
10:31:50 16 liar. I'm also not going to hesitate to tell you that while  
10:31:53 17 there may have been a tangential concern on his part for  
10:31:57 18 those children, I believe that he saw the opportunity from  
10:32:00 19 all the publicity, starting in July -- June the 24th -- 23rd,  
10:32:03 20 when they realized they were missing, and then immediately  
10:32:08 21 the next day called Vernon Unsworth for help on June the  
10:32:10 22 24th. I believe that Elon Musk saw an opportunity to  
10:32:16 23 capitalize on the dilemma and the worldwide attention being  
10:32:22 24 given to the Thai cave rescue, the 12 lost boys.

10:32:31 25                  I do not question the motives, I don't

10:32:37 1 question the sincerity of any member of SpaceX or Tesla or  
10:32:44 2 the Boring company, whoever he instructed to do the task of  
10:32:50 3 building a tube, I believe that those individuals genuinely  
10:32:54 4 had in their hearts and minds that they were working against  
10:32:58 5 time to try to see if they could assist in the rescue. It's  
10:33:04 6 not their motives I question, it's the motives of Elon Musk.

10:33:09 7 And that's harsh. You heard Mr. Spiro say:

10:33:13 8 Mr. Unsworth, are you saying that Mr. Musk is such a  
10:33:15 9 coldhearted person that he didn't really care if those kids  
10:33:19 10 came out alive or not when he built this tube and offered to  
10:33:21 11 use it to send them in? Vernon Unsworth said: That's not  
10:33:28 12 what I said on CNN. And he didn't. He did not attack in any  
10:33:35 13 way Elon Musk. He attacked his tube.

10:33:42 14 But I bet you if I had the private  
10:33:45 15 conversation with Mr. Unsworth and said: Do you think  
10:33:49 16 Mr. Musk was doing this to really save those kids, or do you  
10:33:54 17 think he's doing it to get a lot of publicity for himself?  
10:33:56 18 Publicity drives attention, attention drives investors. I  
10:33:58 19 think Vernon Unsworth --

10:33:58 20 **MR. SPIRO:** Objection. Your Honor.

10:33:59 21 **THE COURT:** Objection sustained.

10:34:00 22 Your personal opinions are not appropriate to  
10:34:03 23 your argument. Anything you want to argue based upon the  
10:34:07 24 evidence is permissible.

10:34:11 25 **MR. WOOD:** I believe a reasonable, average person

10:34:15 1 would answer that question: It was about publicity. And  
10:34:22 2 here is why the reasonable member of the community would  
10:34:26 3 reach that conclusion under the evidence, because after he  
10:34:30 4 showed up in his jet with the tube -- and candidly, I'd like  
10:34:36 5 to refer to it as the shiny object, but I'm going to say the  
10:34:41 6 tube or the submarine, the mini sub. After he showed up for  
10:34:45 7 it, and then he met with the --

10:34:45 8                   **THE COURT:** Just one moment. I want to not  
10:34:47 9 interrupt unnecessarily but clarify something.

10:34:52 10                  You use the term "reasonable person." That  
10:34:56 11 term was part of the instructions. The "reasonable person"  
10:35:00 12 is whether a reasonable reader would construe what Mr. Musk  
10:35:06 13 said in the July 15 tweet as being an accusation of  
10:35:14 14 pedophile. "Reasonable person" now is an argument which you  
10:35:19 15 can consider based upon whether Mr. Musk was truthful or not.  
10:35:25 16 I think it's important that you understand that because of  
10:35:29 17 the term "reasonable person."

10:35:31 18                  Go ahead.

10:35:32 19                  **MR. WOOD:** Thank you, Your Honor.

10:35:36 20                  After meeting with the prime minister of  
10:35:41 21 Thailand, and a reasonable person knows that the Prime  
10:35:47 22 Minister, or can conclude that the Prime Minister of Thailand  
10:35:51 23 is going to come out and meet Mr. Musk and afterwards thank  
10:35:57 24 him, and even in writing, for his efforts because Elon Musk  
10:36:00 25 is one of the most influential people in the world.

10:36:08 1 After the Thai Prime Minister came out upon  
10:36:13 2 his arrival and showed him the respect that he felt  
10:36:16 3 appropriate to one of the most influential people in the  
10:36:19 4 world, Mr. Musk went there to the cave, went into the cave to  
10:36:23 5 a certain point, not to a point where he had to go under  
10:36:27 6 water, because that required you to swim under water for  
10:36:32 7 almost a mile to get to where the boys were, he went into the  
10:36:38 8 cave, and at the time he went into the cave after he brought  
10:36:42 9 the tube there, somehow that had been designed, created,  
10:36:49 10 built, but I submit not safety tested, he stopped at the  
10:36:59 11 water's edge, and then he left. He left. And he went back  
10:37:09 12 after a long day of travel and many hours spent talking back  
10:37:16 13 and forth with Rick Stanton, who he has acknowledged is -- at  
10:37:20 14 least as he saw it -- was the go-to guy, the leader of the  
10:37:25 15 team. That's not really what Rick was. He was just the  
10:37:33 16 go-to guy of the leader of the cave rescuers, the rescue  
10:37:35 17 divers.  
  
10:37:36 18 But I know, I know for a fact, and I do not  
10:37:39 19 hesitate and I would not say otherwise to you that a  
10:37:41 20 reasonable person can assume that Mr. Musk is an extremely,  
10:37:46 21 extremely busy man who has aspirations to try to save the  
10:37:53 22 world or society or civilization, and that takes a lot of  
10:37:59 23 time. And I know he worked hard hours. So, he was tired  
10:38:08 24 when he got there and left the cave, and went to get rest, as  
10:38:12 25 he should have.

10:38:15 1                   There were five people still in that cave  
10:38:19 2 when he went into it that night. Four boys and the coach.  
10:38:30 3 He woke up the next morning, and the evidence shows that he  
10:38:36 4 wrote Sam teller, and the first thing he said was: *I woke up*  
10:38:45 5 *in Shanghai this morning, and my girlfriend had texted me*  
10:38:51 6 *that the press had gone negative, that the governor of the*  
10:39:00 7 *province has said the tube is not practical.*

10:39:04 8                   Now, what do we know? We know when he first  
10:39:08 9 asked, that we have documented under the evidence, what is  
10:39:11 10 missing, what is missing from that e-mail? It should have  
10:39:16 11 been the first question. *Have they gotten the other four*  
10:39:21 12 *boys and the coach out to safety yet?* But it's not there.  
10:39:30 13 It is up to you, the jury, to decide on what Mr. Musk's  
10:39:36 14 motives truly were, under the evidence.

10:39:40 15                   And then Vernon Unsworth, and -- this is not  
10:39:46 16 what my law school teacher told me to do in terms of trying a  
10:39:50 17 case. He wanted me to have a notebook and everything  
10:39:53 18 organized. So, bear with me if I kind of shuffle my papers a  
10:39:58 19 bit.

10:40:03 20                   The boys were, in fact, I believe either  
10:40:07 21 close to or shortly before Mr. Musk woke up and Shanghai, the  
10:40:14 22 other four boys and the coach, through the preparation of  
10:40:21 23 Vernon Unsworth and the skill and execution and courage of  
10:40:26 24 Rick Stanton and the other two expert cave rescue divers,  
10:40:30 25 they brought the last five home. They brought them out

10:40:35 1 safety. Mission accomplished. Miracle performed.

10:40:40 2 And then within a day or two, after he had

10:40:45 3 focused his entire life practically for almost two weeks, a

10:40:50 4 CNN reporter asked him for an interview. Not on Twitter.

10:41:00 5 Never been on Twitter. And the CNN reporter started that

10:41:08 6 interview by his or her choice by asking him one question:

10:41:12 7 *What do you think about Mr. Musk's tube?* And he gave a

10:41:19 8 figurative response at first, what's called an idiom: *I*

10:41:26 9 *think he can stick it where it hurts.*

10:41:28 10 Mr. Musk has admitted that he knew that was

10:41:31 11 an idiomatic phrase that was the equivalent of what? Pardon

10:41:36 12 my language, he was calling bullshit on the tube. And then

10:41:43 13 he went into that interview -- not only did he --

10:41:45 14 Listen, ladies and gentlemen of the jury, I

10:41:50 15 believe that a reasonable person might have used a more harsh

10:41:54 16 phrase in terms of how they would evaluated his tube, a lot

10:41:59 17 harsher than saying *He can stick it where it hurts.* There

10:42:03 18 are more harsh phrases that I believe a reasonable person

10:42:05 19 could have justified Vernon Unsworth saying, when he came out

10:42:07 20 of the 14 days, and somebody said: *What do you think of this*

10:42:10 21 *tube?* But then he told -- he told the answer: *It's too*

10:42:15 22 *long. It's too rigid. It was just a publicity stunt.*

10:42:23 23 Did he say anything inappropriate when he

10:42:26 24 called it a publicity stunt? He did not. And we don't have

10:42:30 25 to go any further than the evidence, even though there is lot

10:42:33 1 of evidence about the numbers of people in the media that  
10:42:36 2 we're talking about it as a public relations stunt before Mr.  
10:42:40 3 Unsworth's interview on CNN, we don't have take the time --

10:42:43 4 **MR. SPIRO:** Objection. It's not in the evidence.

10:42:46 5 **THE COURT:** Objection is sustained. It's beyond  
10:42:48 6 the evidence.

10:42:48 7 **MR. WOOD:** Well, we don't -- we don't need that  
10:42:51 8 evidence, because we have all the evidence we need, that you  
10:42:58 9 need, when Elon Musk testified under oath, himself, he  
10:43:03 10 admitted that he could see how someone could view it as an  
10:43:08 11 narcissistic PR stunt. If he knows that it's a reasonable  
10:43:15 12 statement --

10:43:17 13 **MR. SPIRO:** Objection as to "reasonable."

10:43:20 14 **THE COURT:** Well, I've told the jury the term  
10:43:24 15 "reasonable person" is being used, and I can't disrupt any  
10:43:30 16 choice of words of a lawyer. I have told the jury that  
10:43:38 17 "reasonable person" is part of the instruction regarding the  
10:43:44 18 effect on the listener of the July 15 tweet. Otherwise,  
10:43:52 19 the -- otherwise, counsel can use "reasonable person" as he  
10:43:59 20 wishes.

10:44:00 21 Proceed.

10:44:00 22 **MR. WOOD:** Thank you, Your Honor.

10:44:09 23 And then after -- here is the other question:  
10:44:12 24 How could you accuse someone of being a pedophile as an  
10:44:17 25 actual, factual, statement if you don't know anything about

10:44:22 1 them? That's a good question. I believe Mr. Spiro is going  
10:44:29 2 to argue that to you. That's not what the evidence has  
10:44:33 3 shown.

10:44:33 4 Elon Musk knew information about Vernon  
10:44:38 5 Unsworth because he had met him by seeing him on that  
10:44:42 6 television, three times he watched it, he saw Vernon Unsworth  
10:44:48 7 talking. He knew something about Vernon Unsworth.

10:44:52 8 But then before he -- and his lawyer said --  
10:44:55 9 JDART, before he joked, joking, he did something else, by his  
10:45:02 10 own admission. He went out and did research. He looked up  
10:45:07 11 Vernon Unsworth on Google to use as the basis for saying:  
10:45:13 12 *He's an expat who lives in Thailand, paren, (SUS)*  
10:45:26 13 "suspicious." And that he lived -- that the cave was near  
10:45:31 14 Chiang Rai where Mr. Musk says, he learned from Google, that  
10:45:36 15 it was known for the reputation of child sex trafficking.

10:45:43 16 When he made his -- what Mr. Spiro called him  
10:45:48 17 a JDART, a joke, which I would submit to you was an  
10:45:52 18 accusation of pedophile, he wasn't talking about a stranger,  
10:45:58 19 he was talking about a person he had seen three times on  
10:46:00 20 television talking, he was talking about somebody that he had  
10:46:04 21 researched to get information about, and then after he did  
10:46:07 22 that, did he tell a joke? Did he do an insult?

10:46:15 23 When was the last time a reasonable person  
10:46:18 24 would go out and study a person, research a person, in order  
10:46:27 25 to insult them? An insult is a spontaneous reaction, a

10:46:34 1 spontaneous response.

10:46:36 2 If you research it, by definition, it cannot  
10:46:41 3 be an insult. Insults are not researched. He researched.

10:46:49 4 So, when you look at the JDART --

10:46:58 5 (Discussion held off the record.)

10:46:58 6 So, when you look at the JDART --

10:47:14 7 **THE COURT:** What are you showing here?

10:47:20 8 **MR. WOOD:** The "JDART" definition.

10:47:22 9 **THE COURT:** I saw a transcript on the screen.

10:47:23 10 **MR. WOOD:** It's from the trial transcript --

10:47:25 11 **THE COURT:** The trial transcript can't be shown to  
10:47:27 12 the jury. It's not an official transcript.

10:47:30 13 **MR. WOOD:** I apologize, Your Honor. I think I can  
10:47:31 14 remember it from heart.

10:47:32 15 "JDART." "J" was for "joking"; "dart" was  
10:47:39 16 for "deletion"; "R" was for "responsive to a tweet."

10:47:45 17 Remember, Mr. Unsworth didn't tweet anything  
10:47:50 18 @elonmusk. He didn't even tweet his criticisms of the tube  
10:47:53 19 on Twitter.

10:47:55 20 And then I remember that "JDART" had an "A"  
10:47:58 21 in it for "apology." It had a "D" in it -- I'm sorry -- it  
10:48:02 22 had a "D" for the "deletion."

10:48:04 23 Let's talk about those very briefly before I  
10:48:08 24 try to conclude by talking to you about the damages this man  
10:48:13 25 has suffered, and the verdict that I believe speaks the truth

10:48:16 1 about what he is entitled to receive and the amount that Mr.  
10:48:18 2 Musk should face for punitive damages to discourage him from  
10:48:23 3 ever doing something like this again.

10:48:28 4 "J" -- I've covered it. You don't research a  
10:48:32 5 joke. "D," "deletion." Mr. Musk covered that for us in his  
10:48:42 6 testimony. While you can delete it from your Twitter thread,  
10:48:47 7 it's still out there in the Twitter world on the screen  
10:48:50 8 shots, and it has gone beyond, because it's Elon Musk's  
10:48:56 9 tweet, it has gone way beyond Twitter, because when Elon Musk  
10:49:03 10 tweets something, it goes around the world, and the  
10:49:06 11 mainstream media talks about it and repeats it.

10:49:09 12 You can't delete that. I'm sorry, it can  
10:49:12 13 never be deleted and never has been.

10:49:17 14 Did he apologize? He apologized right up  
10:49:27 15 there on the witness stand, referencing that he had  
10:49:32 16 apologized in the deposition, August of 2019 -- I'm sorry,  
10:49:47 17 18 -- 19. In his deposition of August 22nd of 2019, he  
10:49:52 18 apologized, he said that, and he came to court on December  
10:49:54 19 the 3rd -- seems like a month ago -- and he apologized again.  
10:50:05 20 He didn't have any choice. He had been sued. He was forced  
10:50:14 21 to apologize. He couldn't come into the deposition --

10:50:17 22 **MR. SPIRO:** Objection.

10:50:21 23 **THE COURT:** Overruled.

10:50:22 24 **MR. WOOD:** He couldn't come in and take that  
10:50:26 25 witness stand and look at everyone in the courtroom and go:

10:50:29 1 I'm not going to apologize. I have nothing to apologize for.

10:50:40 2 The apology is in the deposition, and in the  
10:50:43 3 court, I would suggest, can reasonably be viewed as a forced  
10:50:49 4 apology. And by definition, a forced apology is not a  
10:50:53 5 genuine apology.

10:50:55 6 So, let's look at the Twitter apology,  
10:50:58 7 because that's where he said he first apologized.

10:51:01 8 Would you put up that document please for me.  
10:51:07 9 Yeah, that's it. Thank you.

10:51:16 10 Here is the apology. And what has the  
10:51:19 11 evidence shown about that apology, on July the 17th? This is  
10:51:26 12 18th -- July 17th or 18th, that's the first time he said he  
10:51:31 13 genuinely apologized. When his advisors met and said you've  
10:51:39 14 got to apologize, and here is our suggestion on what you  
10:51:42 15 should say.

10:51:44 16 In evidence, you will see his response the  
10:51:46 17 next morning was: *I've slept on it, and I don't like the*  
10:51:50 18 *idea because it would look like I was trying to go out and*  
10:51:55 19 *say it at a time where it might be intentionally viewed by*  
10:51:57 20 *someone as being a disingenuous way to stop the drop in my*  
10:52:02 21 *stock prices or raise it back up.*

10:52:04 22 He apologized that first time and the only  
10:52:07 23 time on Twitter because of the pressures that his comments  
10:52:14 24 were causing on his business and the concerns other people  
10:52:19 25 had about his business. That's why he apologized the first

10:52:24 1 time. That's the one of the three. I've explained the other  
10:52:29 2 two.

10:52:35 3 Under the pressure from colleagues and the  
10:52:37 4 pressure on Tesla stock, on Twitter, I submit to you that  
10:52:46 5 under the evidence, it is justified to find that that was an  
10:52:49 6 apology of convenience. And just like a forced apology is  
10:52:57 7 not a genuine apology, an apology of convenience is not a  
10:53:02 8 genuine apology either.

10:53:04 9 And then he made it on a reply on Twitter.  
10:53:11 10 He didn't -- if it was genuine, he would have picked up the  
10:53:17 11 phone and called Vernon Unsworth, I submit. If it was  
10:53:21 12 genuine, he would have taken the time to write a direct -- to  
10:53:25 13 get someone on his large staff to find Mr. Unsworth's address  
10:53:27 14 to write him a direct letter saying: I'm sorry. I'm sorry  
10:53:31 15 for calling you a "pedo guy" which could be construed  
10:53:35 16 reasonably in the context of the tweet as an accusation of  
10:53:39 17 pedophilia. I'm sorry, Mr. Unsworth.

10:53:40 18 He didn't do that. He didn't even call, as  
10:53:43 19 he told you he could, he could have called a press conference  
10:53:44 20 with all the publicity being given to his accusation of "pedo  
10:53:49 21 guy" or "pedo" or "pedophile," he could have called an  
10:53:53 22 international press conference, and he could have looked over  
10:53:55 23 into the microphone in the scores of the world media, and he  
10:53:57 24 could have said: Mr. Unsworth, I am sorry for what I did. I  
10:54:00 25 apologize to you.

10:54:02 1 He could have even invited and arranged, if  
10:54:06 2 Mr. Unsworth had been asked and wanted to come, he could have  
10:54:10 3 gotten Vernon Unsworth to the press conference. He could  
10:54:12 4 have look over and said: Sir, to your face, I am sorry, and  
10:54:16 5 I apologize to you.

10:54:18 6 He didn't do any of that. So, strike the "A"  
10:54:19 7 out of JDART.

10:54:33 8 After seeing the interview --  
10:54:36 9 And if you would put up Exhibit 19, please.  
10:54:57 10 After seeing the interview, doing his  
10:54:59 11 research, he posted tweets, a thread, where he called him  
10:55:05 12 suspicious based on what he knew about him, and based on his  
10:55:10 13 research I assume -- based on what he found about some  
10:55:14 14 alleged reputation of Chiang Rai, don't know whether that's  
10:55:19 15 true or not, never been there. He intentionally, knowingly,  
10:55:30 16 for his own self purposes, knowing the damage it could  
10:55:37 17 conflict upon Vernon Unsworth, he dropped a bomb on this man.

10:55:42 18 And it was just not a bomb that would drop  
10:55:45 19 and the smoke would go away in a day or so. He dropped a  
10:55:50 20 nuclear bomb on Vernon Unsworth, a nuclear bomb, because a  
10:55:58 21 nuclear bomb would create immediate --

10:56:02 22 We've had too many tragedies of nuclear  
10:56:06 23 explosions in our lives, and we know that a nuclear bomb's  
10:56:09 24 immediate impact is going to be to either kill or horribly  
10:56:15 25 injure someone, immediate impact of the bomb.

10:56:18 1 But what do we know about a nuclear bomb?

10:56:21 2 That well beyond the unfortunate people in the direct

10:56:25 3 vicinity of the blast, there are people and relationships and

10:56:34 4 situations that will be harmed for decades because of the

10:56:44 5 fallout from that bomb.

10:56:52 6 And we know as reasonable folks, when the

10:56:56 7 nuclear bomb goes off, we know the fallout exists. We can't

10:57:04 8 reach out and touch it; we can't look out and see it, but we

10:57:11 9 know that fallout is there. And we know that in years,

10:57:20 10 decades or even another generation that that fallout will

10:57:29 11 harm someone: Cancer, malformation, disease.

10:57:42 12 Nuclear fallout is going to hurt you. You

10:57:45 13 don't know when, you don't know where, except you know it's

10:57:49 14 going to be in the general vicinity of the fallout, and you

10:57:54 15 don't know who. You don't know if it's going to affect your

10:58:00 16 wife, who you loved, despite deciding to separate from, or

10:58:07 17 whether it's going to impact your daughter, who for very

10:58:11 18 personal reasons that are difficult for me, and I apologize

10:58:14 19 for my emotions at times, but I will promise you -- I don't

10:58:19 20 want to take that back. I'm going to ask you to tolerate my

10:58:23 21 emotions sometimes. I'm not going to apologize for them,

10:58:26 22 because they are sincere as they can be.

10:58:29 23 **THE COURT:** Well, here is the thing, Mr. Wood,

10:58:32 24 lawyers are not wooden soldiers, and you're allowed as any

10:58:36 25 lawyer to argue it vigor, but there are limits on

10:58:43 1 emotionality and how your emotionality affects the evidence.

10:58:48 2 So, be vigorous, but keep your emotions in  
10:58:55 3 check.

10:58:56 4 **MR. WOOD:** Thank you, Your Honor. And to the best  
10:58:58 5 of my professional and human abilities to keep my emotions in  
10:59:00 6 check --

10:59:00 7 **THE COURT:** As best you can.

10:59:03 8 **MR. WOOD:** -- I will do so.

10:59:06 9 **THE COURT:** Yes. Thank you.

10:59:06 10 **MR. WOOD:** I will do so.

10:59:14 11 So, you know that fallout is going to harm  
10:59:17 12 your wife, your daughter, maybe your grandchildren, a  
10:59:28 13 companion that you've gotten to know and love, who by some  
10:59:35 14 coincidence, and I don't believe in coincidences, lives near  
10:59:39 15 a cave system that you love, Tham Luang Cave.

10:59:49 16 What we also know about the fallout from the  
10:59:51 17 nuclear bomb, it is really hard to know where it's going to  
10:59:56 18 impact people, because a nuclear bomb sets out the radiation,  
11:00:00 19 and where does the radiation go? Wherever the wind takes it.  
11:00:11 20 Wherever the wind takes it.

11:00:17 21 Mr. Unsworth has told you about the emotional  
11:00:22 22 distress that he has in his life and the concerns he has in  
11:00:25 23 his life for his wife that he's still married to but has been  
11:00:31 24 separated from since 2007 or '8, and the feelings of concern  
11:00:36 25 that he has, not his wife's or his daughter's, the feelings

11:00:40 1 of concerns that he has about how that fallout will impact  
11:00:45 2 his daughter, even though he hasn't talked with her, for  
11:00:49 3 reasons that are private, in six years.

11:00:51 4 And he's got to worry about them, he's got to  
11:00:54 5 worry about every relationship in his life because the  
11:00:58 6 fallout is there for all of them. It has an impact on his  
11:01:03 7 friends, his business colleagues, the fellow members of the  
11:01:09 8 world that love caves. That fallout is going to be there to  
11:01:16 9 even impact relationships that hasn't even formed yet,  
11:01:20 10 friendships that he hasn't formed yet, but he hopes in his  
11:01:24 11 life he will, new people, maybe a new job. That fallout is  
11:01:28 12 going to impact that. He worries about it. Doesn't know  
11:01:32 13 when, he doesn't know how. He can't touch it, he can't see  
11:01:40 14 it, but he knows it's there. And that creates a tremendous  
11:01:45 15 amount of emotional distress. That's called actual damage.

11:01:52 16 May I take a moment to get a chart, Your  
11:01:55 17 Honor?

11:01:56 18 **THE COURT:** Please.

11:02:15 19 **MR. WOOD:** I made a mistake.

11:02:17 20 Would you pull up the diagram?

11:02:28 21 I've talked to you about Mr. Unsworth's  
11:02:31 22 actual damage from the blast. The Judge has instructed you  
11:02:35 23 on the assumed damage, which the law says that if this was  
11:02:38 24 defamation per se, if the accusation was so heinous as to be  
11:02:43 25 a per se defamation on its face, not that he may, but he is

11:02:49 1 entitled, he is entitled to recover an amount that you find  
11:02:54 2 in your enlightened consciousness as fair and impartial  
11:02:58 3 jurors for assumed damage.

11:03:04 4 The assumed damage is the fallout. The  
11:03:10 5 fallout to him, his emotional state and the fallout that will  
11:03:16 6 exist for the rest of his life to his reputation; and as much  
11:03:23 7 as it seems that the actual damage is great, the assumed  
11:03:32 8 damage from the fallout, I submit to you is even greater.

11:03:40 9 Now, who would plant, knowingly and  
11:03:46 10 intentionally plant a nuclear bomb that would kill and maim  
11:03:54 11 many on detonation and threaten others and damage others for  
11:04:02 12 generations to come? Who would do that? Who would plan it  
11:04:08 13 intentionally? Who would plant it for their own self-serving  
11:04:12 14 purposes, knowing that it would harm? What kind of person  
11:04:17 15 would do that? I don't think I know anybody like that.

11:04:21 16 But under the evidence, I submit and suggest  
11:04:26 17 to you that what we do know that in this particular incident,  
11:04:30 18 with this particular planning of the bomb, intentionally, for  
11:04:36 19 self-serving purposes, knowing it would harm others for  
11:04:41 20 decades to come, it was planted by Elon Musk, a  
11:04:48 21 multibillionaire. \$20 billion in net worth.

11:05:00 22 When I said I don't know the kind of  
11:05:02 23 mentality of a person who would plant that bomb, many  
11:05:07 24 reasonable people don't experience what is the mentality of  
11:05:14 25 someone with that much wealth and that much influence.

11:05:25 1 If you find from the evidence, which I think  
11:05:28 2 I've tried to simplify for you, because once you determine  
11:05:31 3 that Mr. Musk lied to you, if he lied to you about one thing,  
11:05:36 4 you can't trust him about anything else he says to you,  
11:05:38 5 because a liar is a liar is a liar. It's someone that you  
11:05:43 6 know, as a reasonable person, you know they have looked you  
11:05:45 7 in the face and they have lied to you, and you know it  
11:05:48 8 without any doubt in your mind, you know that that person has  
11:05:53 9 probably lied to you in the past, because a liar is a liar is  
11:05:56 10 a liar.

11:06:04 11 Four instances, under the evidence, did not  
11:06:26 12 tell you the truth when he testified under oath that "creepy  
11:06:31 13 old man" was quite common in the English speaking world. He  
11:06:42 14 told you under oath that it was quite common in the English  
11:06:48 15 speaking world that if you insulted somebody by saying:  
11:06:51 16 You're a pedo, you're a pedo guy, it's quite common in the  
11:06:56 17 English speaking world that you're simply saying: You're a  
11:07:01 18 creepy old man, suggesting that it is not common in the  
11:07:06 19 English speaking world that when you try to insult someone  
11:07:12 20 you say, by saying pedo guy or pedo, it's not common for  
11:07:16 21 everyone to react by knowing as a reasonable reader or  
11:07:22 22 listener that you are conveying that the person is a  
11:07:29 23 pedophile.

11:07:30 24 His testimony about the common use of "pedo  
11:07:36 25 guy" to mean "creepy old man" in the English speaking world

11:07:39 1 was a lie. I submit to you, under the evidence, that he lied  
11:07:55 2 to you when he told you he was sincerely apologizing to Mr.  
11:08:02 3 Unsworth.

11:08:02 4 And then when they defend -- when he defends  
11:08:09 5 the hiring of James Howard as an investigator on or about  
11:08:13 6 August the 15th, 2018, he told you that he did it because of  
11:08:20 7 anticipation of litigation. Well, it would be correct to  
11:08:27 8 anticipate from the day after you publish that tweet on July  
11:08:30 9 the 15th, you can get ready, you should anticipate  
11:08:34 10 litigation. Because if you falsely call someone a pedo guy,  
11:08:39 11 you can anticipate that that person is going to sue you.

11:08:43 12 But then the man that ran his investigation,  
11:08:47 13 James Birchall, also known as Jim Brickhouse, he told you the  
11:08:56 14 truth. This wasn't about litigation, that the instructions  
11:09:07 15 to leak negative and nasty information, without knowing  
11:09:13 16 whether it was true or false, but learning later that it was  
11:09:16 17 all false, to leak it to the UK was a public relations plan.  
11:09:23 18 He said it right there: *It was a public relations campaign.*  
11:09:28 19 To do what? To do what I guess that he didn't feel like he  
11:09:35 20 had done on July the 15th when he called him pedophile. He  
11:09:38 21 wanted to finish him off in the United Kingdom where he  
11:09:46 22 lives, where his wife lives, where his daughter lives.  
11:09:53 23 Malice. Common law malice. And he didn't tell you the truth  
11:10:01 24 about what he was doing or why he was doing it.

11:10:05 25 We talked about my August 6th letter, and

11:10:09 1 there is some testimony about when he saw it.

11:10:15 2 If you would put up, please, for me the  
11:10:24 3 deposition testimony that I presented to Mr. Musk and  
11:10:27 4 presented to him where he had said that he read the letter.

11:10:32 5 Can you put it up? Excuse me. I have it here.

11:11:03 6 Okay, I don't want to -- I've taken up a lot  
11:11:06 7 of your time. I got a few more minutes, so let me just move  
11:11:06 8 through it.

11:11:10 9 He said on August 6, and I presented it to  
11:11:14 10 him, and I made an emphasis of it. He didn't just say that  
11:11:18 11 he knew about it. He said: *I knew it, and I had read it.*  
11:11:22 12 It's pretty much a quote: *I knew and read it.* Before he  
11:11:26 13 hired the investigator on August the 15th.

11:11:33 14 And here is why I don't hesitate to tell you,  
11:11:36 15 ladies and gentlemen, that was a lie, because he told you it  
11:11:41 16 was a lie.

11:11:42 17 Pull up Mr. Musk's tweet -- I'm sorry. Pull  
11:11:48 18 up that portion of the August 30th e-mail sent to Ryan Mac, a  
11:11:55 19 reporter from BuzzFeed. There it is.

11:12:02 20 As for this alleged threat of a lawsuit,  
11:12:06 21 which magically appeared when I raised the issue, when I  
11:12:12 22 raised the issue, nothing was sent or raised beforehand.  
11:12:13 23 Nothing was sent or raised beforehand: "*I fucking hope he*  
11:12:19 24 *sues me.*"

11:12:20 25 Now there is a lie somewhere, either he read

11:12:24 1 it before August the 15th, or it magically appeared after he  
11:12:28 2 raised the issue a day or two before he sent this August 30th  
11:12:31 3 e-mail to Ryan Mac.

11:12:34 4                   Would you put up the tweet please where Mr.  
11:12:38 5 Musk said: "*Don't you think it's strange he hasn't sued me?*"

11:12:49 6                   There is when he first raised the issue,  
11:12:52 7 talking about, in a thread, about the fact that I had replied  
11:12:58 8 to that tweet in advocating for my client in a court of  
11:13:02 9 public opinion. I said: "*Ask Elon Musk to check his mail*  
11:13:09 10 *before he tweets.*" And he had first raised the issue by  
11:13:12 11 about that August 28th or 29th tweet.

11:13:15 12                   And that's what he's referring to on August  
11:13:17 13 the 30th when he said: "*It magically appeared after I raised*  
11:13:21 14 *the issue.*"

11:13:22 15                   He didn't tell you the truth. He lied to  
11:13:24 16 you. And you know it because of what he said in the e-mail  
11:13:27 17 to Ryan Mac. That's three or four lies, and there are  
11:13:39 18 others.

11:13:41 19                   But on those three or four lies that I've  
11:13:44 20 just gone over with you, if I asked or reasonable person:  
11:13:49 21 Which one is the biggest lie of those? Out of those three or  
11:13:54 22 four, which one is the biggest lie? It's not in that list.  
11:13:59 23 You will not find the biggest lie of them all on that list,  
11:14:02 24 because the biggest lie of them all that Elon Musk told was  
11:14:06 25 when he told the world that Vernon Unsworth is a pedophile.

11:14:11 1 That was the biggest lie of them all.

11:14:27 2 When he said: "You don't think it's strange  
11:14:31 3 he hasn't sued me? He was offered free legal services. And  
11:14:36 4 you call yourself @Yoda."

11:14:42 5 That's when Elon Musk in that tweet conveyed  
11:14:46 6 to the world -- because it's not just Twitter, it goes beyond  
11:14:52 7 Twitter when he speaks on Twitter: "Sue or true." That's  
11:14:57 8 when the challenge was thrown down. That's when the bully,  
11:15:02 9 the billionaire bully, dared Mr. Unsworth, a man of modest  
11:15:09 10 means, when he dared him by saying: If you do not sue, then  
11:15:18 11 it is true.

11:15:23 12 And so this man traveled 5000 miles to get  
11:15:27 13 here, and when your verdict is delivered, he will travel back  
11:15:31 14 5000 miles to the UK. He traveled 10,000 miles to come into  
11:15:39 15 a court of law and accept a challenge to sue Elon Musk, a  
11:15:45 16 multibillionaire, with the financial resources to enlist a  
11:15:51 17 small army of lawyers. He took the day in the face of that  
11:15:58 18 type of known adversary, and he sued him. He sued him  
11:16:02 19 because it was not true then or now. This man is not a  
11:16:09 20 pedophile.

11:17:12 21 My obligation is to answer a few more  
11:17:15 22 questions for you under the evidence, and I will answer those  
11:17:23 23 questions without hesitation, without flinching, because I  
11:17:31 24 know what the evidence justifies in my mind. But I'm not the  
11:17:34 25 one that makes that decision.

11:17:35 1                   These decisions are not what Lin Wood tells  
11:17:40 2 you. You, as fair and impartial jurors, in your enlightened  
11:17:45 3 conscience, you have to fill in these blanks what you believe  
11:17:49 4 is fair and just compensation for actual damage and assumed  
11:17:56 5 damage, that's the compensatory damages to Mr. Unsworth, for  
11:18:00 6 what happened to him and what he fears will happen in the  
11:18:03 7 future, in fact, what he knows will happen in the future  
11:18:07 8 because he knows the fallout will be there even though he  
11:18:10 9 cannot see it and he cannot touch it.

11:18:12 10                  And only you have the right, which I respect,  
11:18:17 11 to determine the amount of punitive damages that Elon Musk  
11:18:24 12 must pay, as the Judge said to you, discourage him -- to  
11:18:36 13 discourage him from ever doing this again to anybody.

11:18:43 14                  I don't have a formula. I don't have a  
11:18:49 15 chart. No lawyer received training in law school on how to  
11:18:52 16 calculate a dollar figure. That's why the law leaves it up  
11:18:57 17 to you to use your enlightened conscience as a fair and  
11:19:00 18 impartial juror to determine a fair compensation for injury  
11:19:06 19 done.

11:19:08 20                  The actual damages from the blast that he has  
11:19:12 21 proven to you by his testimony where he talked about being  
11:19:19 22 ashamed, isolated, humiliated, feeling like he was sentenced  
11:19:26 23 to a life -- he was sentenced to life in prison without  
11:19:29 24 parole, the humiliation, and the damage that has occurred to  
11:19:39 25 his reputation, actual damage to his reputation, I would

11:19:45 1 suggest, under the evidence, not the number you should find,  
11:19:51 2 but the number I believe is supported by the evidence, and I  
11:19:56 3 believe that number for this man's actual damage is very  
11:20:10 4 fairly determined at \$5 million.

11:20:15 5 You may find that it's, in your view, less;  
11:20:19 6 you may find in your view that it's more. That's your right.  
11:20:24 7 In fact, you're the only person that gets to make that  
11:20:27 8 decision. All you've got to do is look at the evidence and  
11:20:30 9 find out what you believe is justified fairly under the  
11:20:33 10 evidence to compensate this man for the blast of the damage,  
11:20:36 11 the actual damage that he's come into court and testified to  
11:20:41 12 you and has proven.

11:20:43 13 But then we've got to talk about assumed  
11:20:46 14 damages, which the law says could be as little as a dollar or  
11:20:50 15 as high as whatever you think it should be. And this is the  
11:20:54 16 damage not from the actual blast, this is the damage from the  
11:20:57 17 fallout. It's called assumed damages. And here it's  
11:21:02 18 appropriate because you assume it because you can't see it  
11:21:06 19 and you can't touch it but you know that it's there and will  
11:21:12 20 be there for the rest of his life and for the lives -- at  
11:21:19 21 least the life of his daughter and potentially his  
11:21:24 22 granddaughter or grandson.

11:21:27 23 I would submit to you, ladies and gentlemen  
11:21:28 24 of the jury, that it would be a reasonable verdict under this  
11:21:34 25 evidence for assumed damage for the fallout, the fallout, to

11:21:49 1 fill that blank with the sum of \$35 million.

11:22:02 2 And then we've got to look at punitive damage  
11:22:05 3 element because we've shown negligence, which is part of --

11:22:10 4 You get to consider the fact that he was  
11:22:13 5 negligent or grossly negligent as part of your determination  
11:22:16 6 of whether he acted with actual malice. This is --

11:22:26 7 The easy part is that -- if you say  
11:22:29 8 something, you do something intentionally, the negligence  
11:22:32 9 part makes you pay for the actual damages is easy. But here  
11:22:38 10 I have not hesitated to tell you this is a lie, and a lie is  
11:22:41 11 intentional, it is intentional, it is knowing, it is  
11:22:44 12 calculated, it is for your own purposes. That's the law of  
11:22:50 13 assumed damage. Punitive damage is to discourage him.

11:23:01 14 What in the world would it take to discourage  
11:23:05 15 Mr. Musk from ever planting a nuclear bomb in the life of  
11:23:14 16 another individual? I don't know. I know that the dollar  
11:23:20 17 amount is not by law designed to prevent it because if he's  
11:23:24 18 going to do it, no matter what you hit him with punitive  
11:23:29 19 damages, he's going to do it anyway.

11:23:31 20 You're not here to prevent him by your  
11:23:34 21 verdict. As the Judge told you, you're here just to  
11:23:37 22 discourage him, to make him think twice before he does it  
11:23:41 23 again, discourage him.

11:23:43 24 If you got \$20 billion, it would not be  
11:23:47 25 unreasonable in this evidence to say: You know what, I'd bet

11:23:51 1 he'd be discouraged if I hit him we a billion dollars in  
11:23:56 2 punitive damages, a billion dollars or more. Because he's  
11:23:58 3 still going to have 19 billion left over. That would  
11:24:01 4 discourage him from doing it again and losing another  
11:24:06 5 billion.

11:24:08 6 Someone else might say, look, we just want to  
11:24:10 7 discourage him by really getting his attention. And maybe we  
11:24:17 8 could get his attention for \$500 million in punitive damages.  
11:24:23 9 Others may say: You know what, I believe, reasonably, that  
11:24:28 10 what he needs is a hard slap on the wrist, and that might  
11:24:37 11 discourage himself.

11:24:51 12 \$150 million. I think that would be a hard  
11:24:57 13 slap on his wrist, that the best we can do as jurors to  
11:25:00 14 discourage him. Let's do that.

11:25:01 15 I would submit to you, with all due respect  
11:25:04 16 for your role as a juror and your right to determine that  
11:25:06 17 amount under the evidence in this case, and this man's wealth  
11:25:08 18 and this man's influence, that the punitive damages award  
11:25:12 19 should not reasonably be for less. But I can understand in  
11:25:22 20 the exercise of your right to make it more.

11:25:33 21 I ask you in my remarks to you to do your  
11:25:39 22 civic duty and to return a verdict that speaks the truth.  
11:25:47 23 And without hesitation, a verdict, as I have written on this  
11:25:53 24 board, will speak the truth. And not only will it speak the  
11:26:01 25 truth, it will be a shining example for others to follow.

11:26:08 1 Those conclude the initial opening remarks on  
11:26:10 2 behalf of the plaintiffs, Your Honor.

11:26:14 3 **THE COURT:** Members of the jury, it's important of  
11:26:16 4 course that you hear both lawyers. And as I said, the  
11:26:20 5 plaintiff goes first; the defendant follows. But it is now  
11:26:29 6 11 -- almost 11:30, 11:27 or so, and I'm going to ask you one  
11:26:44 7 of two things you can maybe think about it informally  
11:26:52 8 yourselves. I would like to take a short recess now and  
11:26:58 9 finish the arguments. Do you think that you could --

11:27:06 10 Paul --

11:27:07 11 COURT CLERK: Yes, Your Honor.

11:27:10 12 (Discussion off the record.)

11:27:28 13 **THE COURT:** What I'm thinking is, do you think  
11:27:30 14 that you could go down to the cafeteria, you know, on the  
11:27:39 15 first floor here, and just sort of grab some sustenance of  
11:27:46 16 some kind, just to carry you over? Not a full lunch, so that  
11:27:49 17 we can come back and, let's say, in 15, 20 minutes and then  
11:27:53 18 we can hear the defendant and then the plaintiff has an  
11:27:57 19 opportunity to make a brief rebuttal argument.

11:28:00 20 Rather than take a lunch hour, and -- I want  
11:28:04 21 you to hear all the arguments as -- together as we can.

11:28:10 22 Is that something that seems out of line, or  
11:28:13 23 can you do that?

11:28:18 24 Is that okay?

11:28:20 25 **THE JURY:** Yes.

11:28:21 1                   **THE COURT:** Go downstairs -- don't talk about the  
11:28:23 2 case, of course -- and just grab, you know, a cup of coffee,  
11:28:30 3 a donut or a muffin or something, and then -- save your lunch  
11:28:34 4 for later -- and come back in, say, 15 or 20 minutes. Okay?  
11:28:41 5 Thank you.

11:28:41 6                   (Following proceedings were held outside the  
11:29:16 7 presence of the jury.)

11:29:16 8                   **THE COURT:** We'll have the defendant's arguments,  
11:29:18 9 at about 15, 20.

11:29:20 10                  I just want to say, Mr. Wood, I didn't  
11:29:23 11 disrupt your argument other than the few interjections, but  
11:29:26 12 you sort of -- and I'm not accusing you of deception here --  
11:29:30 13 but you mislead me, because you said initially you'll be 15  
11:29:35 14 minutes opening, then you modified it to a half hour after I  
11:29:40 15 gave you the format, and I timed it, and you wound up going  
11:29:44 16 an hour and a half.

11:29:46 17                  So, I'm not faulting you. I'm just saying  
11:29:50 18 you disrupted what the planned schedule was, and that's why I  
11:29:53 19 had to make the suggestion to the jury as I did.

11:29:59 20                  In light of the unexpected length of the  
11:30:04 21 plaintiff's argument, any estimate as to how long the --

11:30:10 22                  It isn't tit-for-tat, but I'm just wondering  
11:30:14 23 what the --

11:30:15 24                  **MR. SPIRO:** About 45. I could see it bleeding  
11:30:19 25 into closer to an hour.

11:30:22 1                   **THE COURT:** No, no effort here. I'm just trying  
11:30:26 2 to get a guess.

11:30:28 3                   Okay, back in about 15-20 minutes.

11:32:36 4                   (Recess taken.)

11:32:38 5                   (Reporters switched).

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1 C E R T I F I C A T E

2 I hereby certify that the foregoing is a true and correct  
3 transcript of the stenographically recorded proceedings in  
4 the above matter.

5 Fees charged for this transcript, less any circuit fee  
6 reduction and/or deposit, are in conformance with the  
7 regulations of the judicial conference of the united states.

8

9

10 /S/Anne Kielwasser

11 Anne Kielwasser, CSR, RPR  
Official Court Reporter

12/6/2019

Date

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